

Original Voluntary Fiduciary Correction Program Sample No Action Letter



U.S. Department of Labor
Employee Benefits Security Administration
April 2005

Applicant (Plan Official)
Address

Dear Applicant (Plan Official):

Re: VFC Program Application No. xx-xxxxxx The Department of Labor, Employee Benefits Security Administration (EBSA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). EBSA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to EBSA that demonstrates that you have taken the corrective action indicated. [Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from (date) to (date). All participant contributions were deposited by (date) and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on (date).]

Because you have taken the above - described corrective action that is consistent with the requirements of the VFC Program, EBSA will take no civil enforcement action against you with respect to this breach. Specifically, EBSA will not recommend that the Solicitor of Labor initiate legal action against you, and EBSA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

EBSA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude EBSA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person.

[If the transaction is a prohibited transaction for which no exemptive relief is available, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.]

In addition, you are cautioned that EBSA's decision to take no further action is binding on EBSA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary. If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number*.